

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
AURELIO AND RAFAELA NUNEZ	:	SMALL CLAIMS
	:	DETERMINATION
	:	DTA NO. 820071
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law and New York City Personal Income Tax pursuant to the Administrative Code of the City of New York for the Year 2000.	:	

Petitioners, Aurelio and Rafaela Nunez, 91-19 81st Street, Woodhaven, New York 11421, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax pursuant to the Administrative Code of the City of New York for the year 2000.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 400 Oak Street, Garden City, New York, on October 20, 2004 at 1:15 P.M. Petitioners appeared by John Juergens. The Division of Taxation appeared by Christopher C. O'Brien, Esq. (Dorothy Moody).

The final brief in this matter was due by January 14, 2005 and it is this date that commences the three-month period for the issuance of this determination.

ISSUE

Whether petitioners have submitted sufficient evidence to substantiate that they paid \$2,400.00 in qualifying child care expenses during the 2000 tax year and are therefore entitled to claim a child and dependent care credit in the amount of \$442.00.

FINDINGS OF FACT

1. Petitioners, Aurelio and Rafaela Nunez, filed with the Division of Taxation (“Division”) a timely New York State and City Resident Income Tax Return for the 2000 tax year. On their return, petitioners claimed New York itemized deductions of \$22,847.00, which is the same amount as claimed on their 2000 Federal income tax return.

2. Attached to petitioners’ 2000 return was Form IT-201-ATT, and on Part I of this form petitioners computed the New York itemized deduction figure of \$22,847.00. On line nine of Form IT-201-ATT petitioners were directed to subtract “State, local, and foreign income taxes” from Federal itemized deductions to compute New York itemized deductions; however, petitioners made no entry on this line.

3. On April 14, 2003, the Division issued a Statement of Proposed Audit Changes to petitioners asserting that an additional \$277.00 of New York State and City personal income tax was due for the 2000 tax year, together with interest of \$35.91. The Statement of Proposed Audit Changes reduced petitioners’ claimed New York itemized deductions by \$2,914.00 because they failed to subtract state and local income taxes included in Federal itemized deductions in computing allowable New York itemized deductions.

4. Based on the Statement of Proposed Audit Changes, the Division, on June 9, 2003, issued a Notice of Deficiency to petitioners asserting that \$277.00 of additional New York State and City personal income tax was due for the 2000 tax year, together with interest of \$38.81. In this proceeding, petitioners do not dispute that they failed to make the required subtraction modification for state and local taxes in computing New York itemized deductions, and therefore they concede that \$277.00 of tax is due, plus interest. However, petitioners assert that the

\$277.00 of tax due for 2000 is offset in full by a child and dependent care credit in the amount of \$442.00 which they maintain was inadvertently omitted from their return. Accordingly, in this proceeding petitioners request a net refund of \$165.00 (\$442.00 - \$277.00), plus such interest as is allowed by law.

5. Petitioners submitted in evidence Form IT-216, Claim for Child and Dependent Care Credit, claiming, inter alia, that during the 2000 tax year they paid \$2,400.00 in qualifying expenses to one Daniela Peralta for day care services she provided to their four-year-old daughter Melissa Nunez. The Division requested that petitioners provide substantiation that they in fact paid \$2,400.00 to Ms. Peralta during the 2000 tax year.

6. At the hearing held herein, petitioners' representative did not provide any evidence to substantiate that petitioners paid \$2,400.00 to Ms. Peralta for qualifying child care expenses in 2000. Petitioners were afforded additional time post hearing to submit documentary evidence of the payments they made to Ms. Peralta during the 2000 tax year; however, no additional evidence was submitted.

CONCLUSIONS OF LAW

A. Tax Law § 615(c)(1) requires that in computing allowable New York itemized deductions taxpayers must subtract state and local income taxes included in their Federal itemized deductions. In the instant matter, there is no dispute that petitioners failed to subtract \$2,914.00 of state and local income taxes from their Federal itemized deductions when computing New York itemized deductions. Accordingly, the Notice of Deficiency issued by the Division on June 9, 2003 properly computed petitioners' New York State and City personal income tax liability for the 2000 tax year.

B. Turning next to petitioners' request to have the tax due asserted in the Notice of Deficiency offset by their claim for a child and dependent care credit in the amount of \$442.00, it is concluded that petitioners have failed to meet their burden of proof (Tax Law § 689[e]) to show that they are entitled to the claimed credit. Petitioners, although requested and required to do so, failed to submit any evidence whatsoever to support that they paid \$2,400.00 to Ms. Peralta during the 2000 tax year for child care services allegedly provided to their daughter. Accordingly, since petitioners have failed to substantiate that they paid any qualifying child care expenses in 2000, they are not entitled to claim a child and dependent care credit for this year.

C. The petition of Aurelio and Rafaela Nunez is denied, and the Division's Notice of Deficiency dated June 9, 2003 is hereby sustained.

DATED: Troy, New York
March 31, 2005

/s/ James Hoefer
PRESIDING OFFICER